

Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of)
Video Description of)
Video Programming)

MM Docket No. 99-339

November 13, 2000

**RESPONSE OF THE AMERICAN FOUNDATION FOR THE BLIND TO PETITIONS
FOR RECONSIDERATION**

The American Foundation for the Blind submits this statement of partial opposition to the Petitions for Reconsideration which were filed with respect to the Commission's August 7, 2000 Report and Order in the matter of Implementation of Video Description of Video Programming.

Through this Report and Order, the Commission has set forth a workable regime for the introduction of video description of video programming and we applaud the Commission for this action. Further, we believe that the basic elements of the Report and Order provide a foundation for a historical partnership between the blindness community and the television industry which will ensure full inclusion of people who are blind or visually impaired in the dominant visual media of our time.

Several of the petitioners argue points which the Commission has fully considered and resolved. We urge the Commission to dismiss these arguments. Other petitioners suggest clarifications in the Report and Order as adopted by the Commission. However, certain suggested clarifications may help to reconcile technical issues and we recommend that the Commission consider such modifications.

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Issues Relating to Statutory Authority and the First Amendment

Reconsideration petitions filed by five organizations¹ assert that the Commission lacks the statutory authority to regulate in this area. In addition, the Motion Picture Association of America and DirecTV argue against the constitutionality of such a regulation.

None of the above cited petitioners supply compelling new evidence for examining issues which the Commission has already examined in full and rejected.

Home Box Office Petition for Clarification or Partial Reconsideration

Home Box Office asserts that the use of the terms “audience reach” in the Report and Order versus “audience share” used in the Notice of Proposed Rulemaking inadvertently places HBO within the definition of a multi-channel video program distributor. AFB does not object to a rule modification which would clarify that HBO is exempt based on its assertion that change in terminology from the notice of proposed rulemaking to the report and order inadvertently placed it within the definition of a covered entity ranking among the top five cable networks. We hope that HBO will voluntarily begin providing described programs.

Undue Burden

Petitioners ignore that the Commission has clearly outlined undue burden exemptions and standards for affected broadcast stations or multi-channel video program distributors which, to our analysis, clearly would include factors outlined by petitioners including, as the Report and Order, states: “any other factors which the petitioner deems relevant.” We agree with the Commission’s decision to exempt any particular categories of programming or class of programming providers given the limited nature of the this initial rule.

¹National Association of Broadcasters, EchoStar Satellite Corp., Motion Picture Association of America, DirecTV, and National Cable Television Association

Analog and Digital Programming

The National Association of Broadcasters asks the Commission to reconsider the Report and Order's mandate for video description in an analog environment due to the advent of digital technology.

AFB urges the Commission to reject this request. Such a decision would mean that blind and visually impaired people would be required to wait for the full advent of digital technology and then to purchase expensive new equipment in order to receive the descriptions.

Complaints

The National Association of Broadcasters and the National Cable Television Association ask that the Commission revise the complaint procedures to match those in place for closed captioning. We believe that the Commission recognizes the fact that blind and visually impaired viewers will not have access to the screen which would inform them of which broadcast or cable network they are tuned to. Nor will they have ready access to the television guides which, we hasten to point out, are not required to carry such information. We think it would be within the purview of this Report and Order for the Commission to take steps to inform the public via its web site and other accessible public information means as to the process for complaints along with requirements for documentation.

Repeats, Reruns and Pass Throughs

NAB, TBS, and NCTA have asked the Commission to reconsider its decision regarding the counting or reruns of previously described programs. We recognize that the vast amount of reruns shown during certain times especially summer, may require flexibility in applying the description requirements. Similarly, some covered cable networks provide a significant amount of rerun programs which (though described) cannot be counted. We encourage the Commission

to find ways to provide flexibility in applying the description requirement in these situations.

However, we are concerned that the Commission be mindful that the situation is not analogous to captioning as NAB suggests in pointing out that counting of repeated captioning is allowed. The description for captioning is far, far more significant than for description and it may be several years before a sufficient amount of programming is described to invoke significant exemptions for reruns.

We urge the Commission to reject the recommendation put forth by TBS and NCTA that programs that are licensed, but not owned, by cable networks should be exempted from description requirements. It seems reasonable to expect that program distributors and program producers can provide for description as part of licensing arrangements.

SAP Channel Usage and Video Description

We urge the Commission to reject HBO's argument that use of the SAP channel for Spanish language broadcasting should, per se, exempt it from this rule. Where multiple uses of SAP channel will occur, covered entities should be encouraged to pursue methods such as alternating feeds of video description with other important services such as Spanish language translations on the analog SAP channel. We note that DTV will allow the provision of multiple audio services.

Program Distributer Responsibility and Definitions of Prime Time

AFB supports the comments addressing these points submitted by the Media Access Group at the WGBH Educational Foundation.

Comments of the National Federation of the Blind

The National Federation of the Blind (NFB) raises an important concern in its petition for reconsideration. NFB notes that "There is undeniable support for described entertainment among

blind people and advocates on behalf of the blind. However, described entertainment is not the only issue involving access to television for the blind.” We agree that access to additional information provided via television should be addressed by the Commission. However, such action is not within the purview of this rulemaking. We urge the Commission to consider, through an separate rulemaking, the technical issues related to simultaneous broadcast of the information cited in the NFB petition. While we do agree with the general thrust of these comments we note that video description of prime-time and/or children’s programming is more than mere “described entertainment.” The variety of programming available within the ambit of prime time and children’s programming is often well beyond entertainment.

In conclusion, we remind the Commission that a decade has passed since the development and original deployment of video description of video programming and within that time there has been a near total lack of voluntary compliance by broadcast and cable networks. We believe that the Commission has acted within the purview of its responsibility and has provided a well-constructed rule which, with the modifications supported above, will provide a sound foundation for the roll-out of effective access to television programming for people who are blind or severely visually impaired.

Respectfully Submitted by:

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